Supreme Court, U.S.
FILED
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No. _____

IN THE
Supreme Court of the United States
October Term, 1999

GILBERT GILES AND ERMA FRANKLIN GILES,
Petitioners,
v.
THE STATE OF TEXAS,
Respondent.

On Petition For Writ of Certiorari
To The Court Of Appeals
For The First District Of Texas

PETITION FOR WRIT OF CERTIORARI

JANET MORROW
Of Counsel
6630 Cypresswood Dr.
Suite 200
Spring, Texas 77379
(281) 379-6901
Fax: (281) 379-6916

ROBERT A. MORROW
Counsel of Record
6630 Cypresswood Dr.
Suite 200
Spring, Texas 77379
(281) 379-6901
Fax: (281) 379-6916

Alpha Law Brief Company • Houston, Texas • (713) 270-6604

FIRST QUESTION PRESENTED FOR REVIEW

WHEN COUNSEL TRIED PETITIONERS' CRIMINAL CASE, DESIGNATED THE RECORD ON APPEAL AND TOOK STEPS TO COMPLETE THE RECORD UNDER THE STANDARD OF THE FORMER RULE OF APPELLATE PROCEDURE, DID THE STATE APPELLATE COURT VIOLATE PETITIONERS' DUE PROCESS RIGHTS TO A MEANINGFUL APPEAL AND THEIR RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL BY APPLYING A NEW RULE THAT CAME INTO EFFECT AFTER ALL THESE STEPS WERE TAKEN, FORECLOSING THE RELIEF THEY WOULD HAVE BEEN GRANTED UNDER THE FORMER RULE?

SECOND QUESTION PRESENTED FOR REVIEW

WHEN COUNSEL CHALLENGED THE ADMISSION OF PETITIONERS' STATEMENTS ON VOLUNTARINESS GROUNDS IN A PRETRIAL HEARING, DID THE STATE APPELLATE COURT VIOLATE THEIR DUE PROCESS RIGHT TO A MEANINGFUL APPEAL, AND THEIR RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL, BY DENYING THEM THEIR RIGHT UNDER STATE LAW TO HAVE THE TRIAL JUDGE WHO HEARD THE MATTER MAKE FACTFINDINGS ON THE ISSUE, INCLUDING THE THRESHOLD ISSUE OF CUSTODY?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

DECISION BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL PROVISIONS AT ISSUE 3

PERTINENT TEXAS LAW 4

CONCISE STATEMENT OF CASE 6

Questions Raised and Rejected in Courts Below 6

Facts Material to Questions Presented 7

FIRST QUESTION PRESENTED FOR REVIEW . . . 14

SECOND QUESTION PRESENTED FOR REVIEW . 14

REASONS FOR GRANTING REVIEW
OF QUESTIONS ONE AND TWO 15

ARGUMENT AND AUTHORITIES 17

Arbitrariness of Applying New Procedural
Rule When Appeal Perfected Under Former Rule . . 17

Arbitrariness of Denying Petitioners their Statutory Right to Findings on Voluntariness Including Custody 20

CONCLUSION 23

APPENDIX A 1a

APPENDIX B 15a

TABLE OF AUTHORITIES

Case Page

U. S. SUPREME COURT

Evitts v. Lucey, 469 U.S. 387 105 S.Ct 830, 83, L.Ed.2d 821 (1985) 15, 16, 20

Griffin v. Illinois, 351 U.S. 12,76 S.Ct. 585,100 L.Ed. 891 (1956) 15

TEXAS CASES

Gomez v.State, 962 S.W.2d. 572 (Tex. Crim. App. 1998 17

Guzman v. State, 955 S.W.2d 85 (Tex. Crim. App. 1997) 21

Issac v. State, 989 S.W.2d 754 (Tex. Crim. App. 1999) 17

CONSTITUTION AND STATUTES

Federal

U.S. Const. Amend. V 3

U.S. Const. Amend. VI 3

U.S. Const. Amend. XIV 3

28 U.S.C. § 1257(a) 1

State

Texas Rules of Appellate Procedure
Rule 50(e) (Vernon 1997) 4, 12, 18, 19

Texas Rules of Appellate Procedure
Rule 34.6(f) (Vernon 1997) 4

Texas Code of Crim. Procedure, Art. 38.22 §§6 7, 8, 9, 20

Petitioners respectfully request that a writ of certiorari issue to the Court of Appeals for the First District of Texas, at Houston, to permit this Honorable Court to review the decision and judgments in ***Gilbert Giles v. State***, Nos. 01-95-01145-CR and 01-95-01146-CR, and ***Erma Franklin Giles v. State***, Nos. 01-95-01147-CR; 01-95-01148-CR; 01-95-01149-CR; 01-95-01150-CR; 01-95-01151-CR; 01-95-01152-CR; 01-95-01153-CR; 01-95-01154-CR; and 01-95-01155-CR (Tex. App.-Houston [1st Dist.] delivered September 10, 1998, unpublished, pets. ref'd.)[1]

DECISION BELOW

The Court of Criminal Appeals for the First District of Texas, at Houston, affirmed in one written opinion the two convictions of Mr. Gilbert Giles and the nine convictions of Ms. Erma Franklin Giles on September 10, 1998, with instructions not to publish. A copy of that opinion, from which Petitioners seek a writ of certiorari, is reproduced in Appendix A.

Following the Texas Court of Criminal Appeals' refusal of Petitioners' petitions for discretionary review, the mandates issued. The refusals are reproduced in Appendix B.

STATEMENT OF JURISDICTION

Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1257(a) providing jurisdiction to review "final judgments...rendered by the highest Court of a State in which a decision could be had...by writ of certiorari...when any title, right, privilege, or immunity is specifically set up or claimed under the Constitution...of the United States."

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[1]Mr. Giles and Ms. Giles, husband and wife, Petitioners, and the State of Texas, as Respondent, are the only parties to this cause.

any title, right, privilege, or immunity is specifically set up or claimed under the Constitution...of the United States."

Petitioners and a third co-defendant, Leonard Simmons, were tried together without a jury, upon their pleas of not guilty. Petitioner Gilbert Giles was convicted of two felony offenses: theft and engaging in organized criminal activity, and was sentenced to seven years imprisonment in each case. Petitioner Erma Franklin Giles was convicted of nine felony offenses: theft, engaging in organized criminal activity; five fraud offenses and two offenses of commercial violation. The court sentenced her to ten years imprisonment in all the cases except the commercial violations, in each of which the punishment was a fine of $ 1,000.00.

On direct appeal a panel of the Court of Appeals for the First District of Texas, at Houston affirmed all the convictions for both Petitioners in a single written opinion delivered September 10, 1998, with instructions not to publish. (Appendix A) The opinion addressed the points of error raised on the behalf of both Petitioners and did not distinguish between the two in any respect.

In its opinion the Court of Appeals rejected two claims that Petitioners were entitled to relief because they were being denied a meaningful appeal by the misapplication and/or denial of procedures designed to insure a fair review of their convictions.

Petitioners sought discretionary review of the lower court's opinion in the Court of Criminal Appeals, claiming that the lower court's opinion had denied them their federal due process right to a meaningful appeal and their federal constitutional right to the effective assistance of counsel on appeal. The Texas Court of Criminal Appeals refused Petitioners' petitions for discretionary review without written

order on May 12, 1999. (Appendix B)

The decision became final for purposes of this Court's jurisdiction pursuant to the Rules of this Court, Rule 13(1)(3) on May 12,1999.

The petition is timely filed, by placing it in the United States mail on or before August 10,1999.

CONSTITUTIONAL PROVISIONS AT ISSUE

Three constitutional provisions form the basis for Petitioners' contentions:

U.S. Const. Amend. V

...nor shall any person...be deprived of liberty...without due process of law...

U.S.Const. Amend. XIV

...nor shall any State deprive any person of liberty...without due process of the law...

U.S. Const. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a trial by an impartial jury...to be confronted with the witnesses against him; and to have the Assistance of Counsel for his defense.

PERTINENT TEXAS LAW

Texas Rules of Appellate Procedure
(Vernon 1996)

Rule 50. Record on Appeal
(repealed September 1, 1997)

(e) **Lost or Destroyed Record**. When the record or any portion thereof is lost or destroyed it may be substituted in the trial court and when so substituted the record may be prepared and transmitted to the appellate court as in other cases. If the appellant has made a timely request for a statement of facts, but *the court reporter's notes and records* have been *lost* or destroyed *without appellant's fault*, the appellant *is* entitled to a new trial unless the parties agree on a statement of facts.

Texas Rules of Appellate Procedure
(Vernon 1997)

Rule 34. Appellate Record
34.6(f), (effective September 1,1997)

(f) *Reporter's record lost or destroyed.* An appellant is entitled to a new trial under the following circumstances:

(1) if the appellant has timely requested a reporter's record;

(2) if, without the appellant's fault, a significant exhibit or a *significant*

portion of the court reporter's notes and records has been lost or destroyed or — if proceedings were electronically recorded— a significant portion of the recording has been lost or destroyed or is inaudible;

(3) if the lost, destroyed, or inaudible portion of the reporter's record, or the lost or destroyed exhibit, *is necessary to the appeal's resolution*; and

(4) if the parties cannot agree on a complete reporter's record.

Order of Texas Court of Criminal Appeals
Approving New Rules of Appellate Procedure

Misc. Docket No. 97-9134 (Tex. Aug.15,1997)

2. These amended rules take effect September 1, 1997. Unless this order provides otherwise, they shall govern all proceedings in motions for a new trial, appeals, petitions for discretionary review, and petitions and applications for extraordinary writs thereafter brought and in all such proceedings then pending, *except to the extent that in the opinion of the court their application in a particular proceeding then pending would not be feasible or work injustice, in which case the former procedure may be allowed.*

Texas Code of Criminal Procedure

Art. 38.22 When Statements May be Used

Sec.6 In all cases where a question is raised

> as to the voluntariness of a statement of an accused, the court must make an independent finding in the absence of the jury as to whether the statement was made under voluntary conditions. If a statement has been found to have been voluntarily made and held admissible as a matter of law and fact by the court in a hearing in the absence of the jury, the court *must* enter an order stating its conclusion as to whether or not the statement was voluntarily made, *along with the specific finding of facts* upon which the conclusion is based, *which order shall be filed among the papers of the cause.*

CONCISE STATEMENT OF THE CASE

Questions Raised and Rejected in Courts Below

This is not an *ex post facto* claim. It is a claim that Petitioners were denied their federal constitutional rights to a meaningful appeal and the effective assistance of counsel at trial and on appeal by the Texas courts' actions unfairly restricting their appeal. First, the Texas courts applied a new rule of appellate procedure to their case, when their appellate rights had been preserved and protected under the old rule. Petitioners' counsel had no opportunity, and indeed no reason to protect the appellate record in the way that is now necessary, no reason to take the kinds of precautions trial counsel must now take to insure some backup or alternative means of preserving the proceedings against the possibility that the official method will fail.

Second, the Texas courts prevented Petitioners from obtaining an adequate consideration on appeal of their claims that their statements were involuntary. The appellate courts

refused to require the trial court to file its findings of fact and conclusions of law in compliance with the mandatory requirement of Texas procedural law, TEX. CODE CRIM. PROC. ANN. art. 38.22, § 6. Petitioners did not quarrel with the proposition that custody is a threshold question for voluntariness; they *did* object to their being denied the trial court's findings on that issue, when Texas law guarantees every criminal defendant the right to those findings, upon which obtain review. The arbitrary refusal of Petitioners' statutory right to the factfindings denied them a meaningful appeal and the effective assistance of counsel on appeal. Both these questions were presented to the Texas Court of Criminal Appeals, the State's court of last resort in criminal cases, in Grounds One, Two and Five of the petitions for discretionary review invoking Petitioners' federal due process right to a meaningful appeal and their federal constitutional right to the effective assistance of counsel at trial and on appeal. Those petitions were refused.

Facts Material to Question Presented

Petitioners were represented by separate counsel at their joint trial. The proceedings before and during the trial were recorded by a court reporter taking notes; there were no backup methods of recording.

On appeal, Petitioners were both represented by the same attorney. Appellate counsel on September 25,1995 timely filed the designation of record on appeal pursuant to the rules of appellate procedure then in effect specifying for inclusion "the motions and transcripts of all pretrial hearings and the court's rulings on said motions." Counsel further made a written request to the court reporter pursuant to the then current rule specifically requesting transcriptions of notes of

proceedings occurring before, during and after trial, including testimony, arguments and rulings on any pretrial hearings.

The docket sheets in the record reflect that on March 29, 1995 Petitioners appeared in person with their attorneys, for a pretrial motion hearing. Counsel Mr. John Brooks appeared for the State and the Honorable Ted Poe presided at the hearing. Ms. Stevie Johnson was the court reporter. According to the notations on the docket sheet, it was established at the hearing that the defense had reviewed the State's file; two motions were filed and an additional eight motions are listed on the docket sheet.

Petitioners' counsel in "causing the statement of facts to be filed" as was his responsibility under the then current rules, was informed by the court reporter Ms. Johnson that she had lost her notes of that proceeding and could not, therefore, transcribe them for inclusion in the record on appeal. Counsel filed a motion in the First Court of Appeals styled "Appellant's Motion to Supplement Record, or in the Alternative, to Abate Appeal for Determination of Unavailability of Statement of Facts," attaching copies of the designation of record and request for statement of facts, along with the sworn affidavit of Ms. Johnson.

On the same day as he filed the motion to resolve the question of the lost notes, Petitioners' counsel also filed two other motions, one asking the Court to abate the appeal for the entry of factfindings concerning the admission of their statements at trial, as required by Art. 38.22 § 6, of the Code of Criminal Procedure, so that

counsel could adequately brief the issue of the admissibility of those statements, and the other asking for an extension to file the brief for some period of time that would allow for abatement and findings by the trial court. These three motions were filed on January 21, 1997. The State opposed both motions to abate.

First, the appellate counsel for the State asked the court to deny the request for factfindings because "no statement from either appellant was the product of custodial interrogation," citing as proof of this claim "the affidavits submitted by the State in response to the appellants' motion to suppress evidence" which showed, according to the State, that the appellants were not under arrest or detained when they were interrogated by the district attorney's investigator. There was no need, the State said, to have the trial court prepare any 38.22 findings on the Motion to Suppress. The State suggested that should the Court of Appeals find the affidavits upon which the Motion to Suppress was decided insufficient to resolve the question of custody, the court ought to postpone determination of the issue "to permit a review of *the complete appellate record* and the *filing of briefs* by both parties." There were no such "affidavits submitted by the State" in the record on appeal, so that the Court of Appeals could not find these particular affidavits sufficient or insufficient to resolve the question. The State had not offered any affidavits into evidence or made them part of the record on appeal.

Second, the State opposed any abatement for a hearing on the lost statement of facts of the hearing at which the trial court -- according to the docket sheet -- heard and ruled on the Motion to Suppress "after

arguments heard." Counsel for the State asserted that "absolutely nothing of any significance" occurred at that hearing, as proven by the trial prosecutor's affidavit, attached to the motion opposing abatement, and he further asserted (in contradiction to the docket sheet entry) that "no argument of counsel was entertained" and the Petitioners' Motion to Suppress evidence was "not heard or ruled upon" at the hearing.

It is crucial to note, in this Statement of Material Facts, a particular contrast between what is noted in a docket sheet entry of a pretrial proceeding and what is revealed by a statement of facts from that same proceeding. In its response opposing Petitioners' requests for abatement, Counsel for the State suggested that the missing statement of facts had no relevance to the cases upon which Petitioners were indicted after the March 29 proceeding. "A review of the *docket sheets,*" the State said, did not indicate that the March 29 hearing had any relevance to the later-indicted cases. That was true. Nowhere did the *docket sheet* entries for any date "indicate" the answer to that question.

A review of the corresponding *statement of facts*, however, *does* reveal that on April 11 and May 10, 1995, the trial court granted Petitioners' request that all matters and motions ruled upon before the post March 29 indictments would be carried forward and applied to the new cases. So, in just a few pages of the statement of facts (an admittedly brief period) the trial court heard and granted a significant request that was crucial to Petitioners' request for relief in the appellate courts. Yet the docket sheets were silent on the matter. If only the docket sheets were relied upon, the request and

ruling never happened. Almost two years later, appellate Counsel for the State professed himself sure enough, based on the absence of the matter from the *docket sheets*, to ask the Court of Appeals to deny Petitioners' request for relief on all cases indicted after March 29, when in fact the *court reporter's notes* revealed that the relief would apply to those cases. Petitioners were able to respond to the State's argument only because there was a *statement of facts* from April 11 to support their request for relief in all the cases.

The Court of Appeals did abate the appeal, pertaining to all the cases, for a hearing concerning the missing statement of facts. In its Order of April 25, 1997 the court remanded to the trial court with instructions to determine whether a statement of facts from the March 29, 1995 pretrial hearing could be produced and, if not, "to determine what occurred during the March 29, 1995 hearing, and what orders resulted from that hearing."

On May 28, 1997 the trial court conducted the hearing and heard testimony from the court reporter, Ms. Johnson. When she testified about losing her notes, she said the only remaining method that might be used to find them was, " . . . to pray, and maybe God will reveal to me where they are." She said the District Attorney's investigator, Daniel McAnulty, had called her from Austin about the lost notes, and that he was "upset about it, which I understand."

The trial court questioned Ms. Johnson, as did the prosecutor. She told the court she remembered what happened at the two-year-old hearing, "Not real clearly,

but I do remember that it was not a presentation of, like, new facts, you know."

When the prosecutor asked Ms. Johnson whether she recalled any testimony being "taken" during the 1995 motions hearing, she answered, "If I recall correctly it was the lawyer presenting --whatever he was motioning the court for." "But there were no witnesses called to the witness stand?" the prosecutor stated.

> "Right," she responded, "There was (sic) definately (sic) no witnesses, unless possibly one of the defendants. I don't remember if they spoke, but it was only them and their attorney."

The trial court determined in his written findings that Ms. Johnson had stenographically recorded the proceedings on March 29, 1995, but had lost the notes, so that no statement of facts could be prepared. He further found that the statement of facts was unavailable due to no fault of either Petitioner. Petitioners' counsel made it clear on the record that the defense objected to any reconstruction of the proceedings through the memory of the prosecutor, the court reporter or the trial court itself, citing a Court of Criminal Appeals decision which strictly construed the terms of Rule 50(e). (which the rule was still in effect at the time of the hearing)

The trial court made further findings, adopting the State's proposed findings, to the effect that no testimony had been adduced at the March 29, 1995 hearing, that no argument of counsel was entertained by the court, specifically that no arguments on the Motion to Suppress

were heard on that date "and any docket sheet entry indicating otherwise is incorrect."

Then the trial court made the finding that went beyond the Court of Criminal Appeals' instruction, by adopting the State's assertion that because there had been no testimony and no argument (according to court's memory and the prosecutor's memory) "no transcription of the court reporter's notes of that hearing *will be required* for consideration of *any issue on appeal*, and the appellate record for these cases is *entirely complete and sufficient* without any such transcription of those notes."

After the entry of these findings and the filing of the supplemental transcript and statement of facts on June 27, 1997, Petitioners awaited the appellate court's ruling on their previously filed motion to abate for the entry of factfindings on the Motion to Suppress, the abatement request which had been filed on January 21, 1997. On July 1, 1997, as a means of securing a ruling, Petitioners moved to resubmit the motion. In February 1998, some eight months later, and AFTER THE PASSAGE OF THE NEW RULES OF APPELLATE PROCEDURE, the Court of Appeals denied the motion, so that no factfindings were ever made or entered into the record concerning the trial court's ruling on the Motion to Suppress.

FIRST QUESTION PRESENTED FOR REVIEW

WHEN COUNSEL TRIED PETITIONERS' CRIMINAL CASE, DESIGNATED THE RECORD ON APPEAL AND TOOK STEPS TO COMPLETE THE RECORD UNDER THE STANDARD OF THE FORMER RULE OF APPELLATE PROCEDURE, DID THE STATE APPELLATE COURT VIOLATE PETITIONERS' DUE PROCESS RIGHTS TO A MEANINGFUL APPEAL AND THEIR RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL BY APPLYING A NEW RULE THAT CAME INTO EFFECT AFTER ALL THESE STEPS WERE TAKEN, FORECLOSING THE RELIEF THEY WOULD HAVE BEEN GRANTED UNDER THE FORMER RULE?

SECOND QUESTION PRESENTED FOR REVIEW

WHEN COUNSEL CHALLENGED THE ADMISSION OF PETITIONERS' STATEMENTS ON VOLUNTARINESS GROUNDS IN A PRETRIAL HEARING, DID THE STATE APPELLATE COURT VIOLATE THEIR DUE PROCESS RIGHT TO A MEANINGFUL APPEAL, AND THEIR RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL, BY DENYING THEM THEIR RIGHT UNDER STATE LAW TO HAVE THE TRIAL JUDGE WHO HEARD THE MATTER MAKE FACTFINDINGS ON THE ISSUE, INCLUDING THE THRESHOLD ISSUE OF CUSTODY?

REASONS FOR GRANTING REVIEW OF QUESTIONS ONE AND TWO

THE TEXAS COURTS HAVE DECIDED AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT. U.S.S.Ct.R. 10 (c)

Petitioners are aware that the Constitution does not require a state to provide appellate review, at all, of criminal convictions, and that a state may impose limits upon any right of review it does provide. See, ***Griffin v. Illinois***, 351 U.S. 12,18,76 S.Ct. 585,590, 100 L.Ed. 891 (1956). These limits, however must satisfy constitutional principles of due process and equal protection.

"...When a State opts to act in a field where its action has significant discretionary elements, such as where it establishes a system of appeals as of right although not required to do so, it must nonetheless act in accord with the dictates of the Constitution- - and, in particular, in accord with the Due Process Clause." ***Evitts v. Lucey***, 469 U.S. 387, 401, 105 S.Ct. 830, 839, 83 L.Ed.2d 821 (1985). Texas provides all its citizens an appeal as of right from a criminal conviction and it cannot, consistent with due process guarantees, arbitrarily deprive Petitioners of their right to relief based upon the incompleteness of a record that counsel had designated and preserved in a manner that was orderly, logical, professional, and timely under the standards of the rules of appellate procedure in existence at the time those steps were taken. Such arbitrary action implicates Petitioners' Sixth Amendment right to

effective counsel at trial and on appeal, as well.

Likewise, the State cannot foreclose Petitioners' state statutory right to trial court factfindings on custody, as a threshold question in the inquiry into the voluntariness of their statements, without arbitrarily violating their due process right to a meaningful appeal and Sixth Amendment right to effective assistance of counsel on appeal.

In this particular case, the Texas court's refusal to reverse Petitioners' convictions under the old standard cannot be justified on the ground that the rule change implicated a "mere change in the outcome." Petitioners argued that they had been precluded from preserving and demonstrating harm because the prior rule had required no action by counsel to do so.

Further, the court's refusal to abate the appeal in the usual manner for the entry of findings on voluntariness, operated as an unfair limitation upon Petitioners' right of appeal. The court's arbitrary foreclosure of Petitioners' right to review directly conflicts with the due process principles expressed by this Court in ***Evitts v.Lucey***, *supra*, in which the Court held that the Due Process Clause of the Fourteenth Amendment guarantees the right of effective presentation (and consideration) of a criminal defendant's case on appeal, so that if counsel's failure to comply with a state procedural rule operated to deny meaningful appellate review, the appellant has been denied due process of law. Review by certiorari is warranted under U.S. S.Ct. R., (.1.)(c)

ARGUMENT AND AUTHORITIES

Arbitrariness of Applying New Procedural Rule When Appeal Perfected Under Former Rule

Petitioners' argument that it would work an injustice to apply the new standard of Tex. R. App. P. 34.6(f)(3), when defense counsel tried the case and designated the record while the former rule was in effect, was of course based upon the premise that there was "a practical difference" between those two standards. So, Petitioners began their argument to the State courts by stating that there is clearly *is* a difference, or *was* a difference, so that it would be unjust to deprive them of the benefit of the old rule.

The Court of Criminal Appeals in *Gomez v. State,* 962 S.W.2d 572 (Tex. Crim. App. 1998) may have meant to hold that under the former rules an appellant had to show harm, in that he had to show a lost or destroyed exhibit was necessary to resolution of the appeal, just as the specific terms of the new rule require, but the Court clarified its position in *Issac v. State*, 989 S.W.2d. 754 (Tex. Crim. App. 1999) a case involving lost reporter's transcription. The court held that although there was a difference between former and new rules, the difference was a "mere" change in outcome, only a difference in the standard of review. Unlike the appellant in *Issac*, Petitioners have consistently urged that the injustice lies in the ability of counsel to prevent error in perfecting the trial and appellate records.

The Court of Criminal Appeals had long construed former Rule 50(e) and its predecessor rules as applying whether all or only a portion of the statement of facts is missing from the record, and had held that the reviewing court *cannot affirm the conviction* in the circumstances. Furthermore, for over 60 years the Court had enforced consistently the appellant's right to a complete statement of facts (once it is shown the proceeding was recorded and the appellant timely requested the transcription of his appeal) without requiring that he demonstrate, or even allege that he suffered harm from the absence of the statement of facts, and without requiring that he advance any explanation for declining to agree upon some proposed substitution for the missing record. This structural, prophylactic approach had long been recognized as a way to protect the appellate process against errors and harm the individual appellant might not be able to demonstrate without access to the very material which is missing from the record.

Rule 50 (e) was in effect when the pretrial hearing was held (for which the notes were lost) when the Motion to Suppress was heard and denied, when Petitioners were tried, when counsel designated the record on appeal, and when counsel moved for abatement and hearing to meet their burden under the terms of that rule. Rule 50 (e) was in effect when the trial court made its findings pursuant to the Court of Appeals' Order and abatement. Rule 50 (e) was in effect when Petitioners filed their motion over a year before filing the brief, asking for abatement and the entry of findings on the denial of their Motion to Suppress; Petitioners on the same day filed a motion for

extension of time to file their brief, so that counsel would have access to a complete record in deciding what issues were raised and how they could be argued. The court below should have applied Rule 50 (e) rather than the new rule because it was clearly unjust to deprive Petitioners of the relief to which they would have been entitled before. The new rule on its face appears to disregard the underlying premise of the old rule and appears to convert the issue into one that is strictly harm-related. The result is that defense counsel warned of the new rule and trying a case today must take new and different steps to preserve an appellate record.

An appellant who was tried before the passage of the new rules had no chance to protect his record in the way that is now required. Defense counsel then had no reason to do any more than he did to obtain a complete record, no reason to take the kinds of precautions that trial counsel now must take, under the new rule, to insure some kind of backup or alternative means of preserving the proceedings against the possibility that the official method will fail. Petitioners strongly argued that because counsel pursued their trial and preserved their record for appeal under the dictates of then existing statutory and caselaw, it was not "feasible" in the terms of the Order implementing the new rules to apply a rule that retroactively requires counsel to have been able to demonstrate the "necessity to the resolution of the appeal" of any portion of the record that may later turn up missing. It cannot be feasible in terms a "successful" application unless, of course, success means only affirming the conviction.

In these circumstances, it would be illogical and unjust to apply the new rule retroactively. To do so would be unfair and unjust under the Order implementing the new rules. Because of trial and appellate counsel's justified reliance upon then existing caselaw, to deprive Petitioners now of the application of that law would be to deprive them of the constitutional right they are granted by federal constitution to an adequate record for a meaningful appeal and to the effective assistance of counsel. ***Evitts v. Lucey***, *supra*.

Petitioners respectfully ask the Court to accept their case for review to address the application of both the new and old rules to the situation in which counsel has taken all the steps necessary to preserve his client's record for appeal, including seeking an abatement and hearing, well before passage of the new rules.

Arbitrariness of Denying Petitioners Their Statutory Right to Findings on Voluntariness, Including Custody

The Court below has decided, in denying Petitioners an abatement for the entry of factfindings on voluntariness, that the threshold issue of custody is not one upon which it is necessary to obtain the trial court's findings; instead, the reviewing court's finding that the statements were not custodial obviates any need for the 38.22 findings. As far as Petitioners can tell, this Court has never been presented with the precise question.

It appears that Texas trial courts have at times made such threshold findings on custody, and the findings have been given deference insofar as they embody a finding on a mixed question of law and fact which rests, in part, upon the

trial court's assessment of the demeanor and credibility of witnesses. ***See, e.g., Guzman v. State***, 955 S.W. 2d 85, 89 (Tex.Cr.App. 1997)

Petitioners recognize that there are times when a finding that a statement was or was not custodial is a mixed question of law and fact which does *not* turn upon an evaluation of demeanor and credibility, because "custody" is essentially an objective issue, and can therefore be evaluated, *de novo* by the reviewing court based upon the record.

While the custody question will not always, and may not often involve a credibility assessment, it appears to do so in Petitioners' case. The voluntariness issue, including any threshold question of custody, was litigated only by affidavit at the limited pretrial proceeding. The record contains only the facts alleged in the defense Motion to Suppress and its supporting affidavits. The record does not contain any affidavits of facts disputing Petitioners' assertions, not does it contain findings by the trial court relying upon any contradicting facts. Petitioners' Motion to Suppress raised the voluntariness issue, alleging that their oral statements should be excluded because they were not warned of their right to refuse to answer questions and did not waive their rights before speaking with the District Attorney's investigator. The defense offered evidence through the method permitted by the trial court, that the circumstances were intimidating and coercive. It was the defense contention that all of Petitioners' oral statements, which were used to support the applications for later search and arrest warrants, and which were used against them at trial as evidence of guilt, were the result of the first, unwarned statements on September 20, 1994, when Petitioner Erma Giles was questioned in the presence of the numerous law enforcement officers who descended, unannounced on the Gileses' place of business. The defense affidavits, submitted

with the motion, state that it was Investigator McAnulty who conducted the intimidating questioning, and that Petitioner Erma Giles realized she was suspected of a crime because of the presence and conduct of officers who were not associated with the "inspection warrant". McAnulty, whose affidavit, if any, is not in the record, testified at trial that he was not even present in the Gileses' pharmacy on September 20. Although he agreed at trial he had sent other officers to "simply accompany" the D.E.A. agents, McAnulty conceded he instructed one to take photographs and another to make secret recordings of any statements Petitioners made; Investigator Johnson was supplied in advance with a list of drugs to "look for".

From the record as it stands, and without any factfindings, neither the state appellate court nor Petitioners' counsel could know if the State contradicted the defense's alleged facts and/or offered additional significant facts. It cannot be said what facts the trial court found to be credible and it cannot be said upon what facts the court based its ruling.

In short, this is not a record upon which any reviewing court should have relied in determining that Petitioners' statements were not custodial in nature. Without factfindings that incorporate every aspect of Petitioners' claim, including the custody issue upon which they bore the burden of proof, they could not adequately present and argue their voluntariness claim.

The denial of the request abatement for the entry of factfindings foreclosed Petitioners' presentation of their custody and voluntariness claims to the state appellate court and that defect should be remedied by the granting of review and remand.

CONCLUSION

WHEREFORE PREMISES CONSIDERED, Petitioners respectfully pray that the Court grant their petition and issue a writ of certiorari to the Court of Appeals for the First District of Texas to review the questions here presented.

Respectfully submitted,

JANET MORROW
State Bar No. 18067800
6630 Cypresswood Dr.
Suite 200
Spring, Texas 77379
Telephone:(281) 379-6901
Telecopier:(281) 379-6916
OF COUNSEL

ROBERT MORROW
State Bar No.14542600
6630 Cypresswood Dr.
Suite 200
Spring, Texas 77379
Telephone:(281) 379-6901
Telecopier:(281) 379-6916
COUNSEL OF RECORD

APPENDIX A

Opinion issued September 10, 1998

SEAL

In The
COURT of APPEALS
For The
FIRST DISTRICT OF TEXAS

NOS. 01-95-01145-CR
01-95-01146-CR

GILBERT GILES, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause Nos. 691087, 691090

NOS. 01-95-01147-CR
01-95-01148-CR
01-95-01149-CR
01-95-01150-CR
01-95-01151-CR
01-95-01152-CR
01-95-01153-CR
01-95-01154-CR
01-95-01155-CR

ERMA FRANKLIN GILES, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause Nos. 9424901, 9424902
9424903, 9424904, 9424905, 9424906,
9424900, 691089, and 691086

O P I N I 0 N

Appellants, Gilbert Giles and Erma Franklin Giles, and a third codefendant, Leonard Simmons, [1] were tried together without a jury. Appellant Gilbert Giles was convicted of felony theft and engaging in organized criminal activity. He was sentenced to seven years incarceration in each case. Appellant Erma Franklin Giles was convicted of one charge of felony theft, one charge of engaging in organized criminal activity, five charges of fraud, and two charges of commercial violation. [2] She was sentenced to 10 years incarceration in the theft, engaging in organized

---

[1] Simmons was convicted of engaging in organized criminal activity; the appeal is pending in this Court in cause number 01-95-01144-CR.

[2] The fraud and commercial violation offenses are codified in the Texas Health and Safety Code. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 481.128(a)(3), 481.129(a)(4)(A), 481.129(a)(5) (Vernon Supp. 1998).

criminal activity, and fraud cases, and to a fine of $1,000 in each of the commercial violation cases. We affirm.

Lost Court Reporter's Notes

In point of error two, appellants contend they are entitled to a new trial under former Rule of Appellate Procedure 50(e) because a portion of the court reporter's notes was lost without appellants' fault, and they did not agree to a limited statement of facts.

a. Facts Concerning the Lost Notes

On April 25, 1997, we remanded this case to the trial court for a determination of whether a record from the March 29, 1995, hearing could be produced. A hearing was conducted in the trial court on May 28, 1997. At that hearing, the court reporter, Ms. Johnson, stated that she recorded the proceedings on March 29, 1995, but could not find her notes. The trial judge filed findings of fact on June 16, 1997. Among the court's findings were the following:

> On March 29, 1995, this Court conducted a non-evidentiary hearing in Cause Nos. 684,039 and 684,040 and 94-24900 through 94-24906, styled The State of Texas v. Gilbert Giles and Erma Franklin Giles.
>
> No testimony was adduced during that hearing, and no argument of counsel was entertained by the Court.
>
> At the outset of the hearing on March 19, 1995, the Court ascertained that the State's file had been open to counsel for the defendants. It then noted the filing of motions for probation and elections for assessment of punishment by the jury, and announced that both

attorneys would be expected to comply with the "228th District Court Rules for Conduct of Counsel While in Trial," which were provided to each counsel in written form.

The Court then proceeded to announce for the record its prior rulings on the following motions; the State's "Motion to Amend the Indictments and Strike Surplusage"; the defendants' "Motion to Discover State's Extraneous and/or Unadjudicated Acts of Misconduct to be Offered at Guilt or Punishment"; the defendants' "Motion for Equal Access to Background Information on Prospective Jurors"; the defendants' "Motion for Hearing on Admissibility of any Statement by Defendant Whether Written or Oral or Evidence Resulting from the Same"; the defendants' "Motion to Discover Arrest and Conviction Records of Witnesses"; the defendants' "Motion to Require the State to Reveal Agreements"; the defendants' "Motion for the Court to Direct Court Reporter to Take Voir Dire Examination of the Jury and Bench Conferences and All Final Arguments"; the defendants' "Motion for Discovery of Extraneous Offenses"; and the defendants' "Motion for Discovery and Inspection."

Each of those motions was granted by the Court, and the files maintained by the district clerk contain the original motions and the Court's written notations of its rulings on those motion.

The Court's rulings on those motions were also noted upon the docket sheets. The granting of each motion was indicated on the docket sheet by use of a plus symbol.

The Court did not conduct a hearing on the defendants' motion to suppress evidence on March 29, 1995, and instead announced on that date that the hearing on that motion would be held on April 11, 1995. No arguments on the motion to suppress were entertained during the hearing on March 29, 1995, and any docket sheet entry indicating otherwise is incorrect.

Nothing else occurred during the hearing on March 29, 1995.

Because no testimony was adduced during the hearing conducted on March 29. 1995. and the Court did not entertain any argument of counsel, but merely announced its prior written rulings on routine motions, no transcription of the court reporter's notes of that hearing will be required for consideration of any issue on appeal, and the appellate record for these cases is entirely complete and sufficient without any such transcription of those notes.

The hearing on March 29, 1995, was stenographically recorded by substitute court reporter Stevie Johnson.

Ms. Johnson has lost her notes from the March 25 [sic}, 1995, hearing.

No statement of facts can now be prepared from the March 25 [sic], 1995, hearing.

The statement of facts is unavailable to Appellants through no fault of theirs.

Both the clerk's record and reporter's record reflect that the motion to suppress was considered by the trial judge and denied on April 11, 1995.

b. Which Rules of Appellate Procedure Apply?

Appellants argue that former Rule of Appellate Procedure 50(e) should be applied to a resolution of whether the loss of the reporter's notes entitles them to a new trial because it was the rule in effect when these appeals were perfected and when the trial judge made his findings concerning the lost notes. The former rule provided in part:

> If the appellant has made a timely request for a statement of facts, but the court reporter's notes and records have been lost or destroyed without appellant's fault, the appellant is entitled to a new trial unless the parties agree on a statement of facts.

TEX.R.APP.P. 50(e) (Vernon 1997).

Amended rule 34.6(f) reads in pertinent part:

> An appellant is entitled to a new trial under the following circumstances:
>
> (1) if the appellant has timely requested a reporter's record;
>
> (2) if, without the appellant fault,... a significant portion of the court reporter's notes and records has been lost or destroyed...;
>
> (3) if the lost... portion of the reporter's record... is necessary to the appeal's resolution; and

(4) if the parties cannot agree on a complete reporter's record.

TEX.R.APP.P. 34.6(f) (effective September 1, 1997).

Both the former and amended rules require a timely request for a statement of facts, or reporter's record. Both require the missing portion of the record to have been lost or destroyed without appellant's fault. Both require an inability of the parties to agree on a statement of facts, or reporter's record. The amended rule includes a requirement that the missing portion of the record be significant and necessary to the appeal's resolution. The Court of Criminal Appeals recently added a like requirement for an analysis under the former rules. *See Gomez v. State*, 962 S.W.2d 572, 576 (Tex. Crim. App. 1998). The court held that reversal was required only if the missing portion of the record was "necessary for the appellate court's review of the case on appeal." *Id.* at 576. Therefore, since the issuance of *Gomez*, there is no practical difference in an analysis under the former or amended rules concerning lost or destroyed portions of a record. *Osuch v. State*, No. 01-95-01259-CR, slip op. at 5 (Tex. App.—Houston [1st Dist.] June 4, 1998, no. pet.) (designated for publication).

c. Analysis

Under Rule of Appellate Procedure 34.6(f), an appellant is entitled to a new trial if he timely requested a reporter's record, a significant portion of it was lost without his fault, the lost portion is necessary to the appeal's resolution, and the parties cannot agree on a complete reporter's record. It is uncontroverted that appellants timely requested a reporter's record, that a portion of the reporter's record was lost without appellants' fault, and that the parties cannot agree on a complete reporter's record. However, the

record is clear that the missing portion of the reporter's record was neither significant nor necessary to the appeal's resolution.

According to the trial judge's findings, the proceedings that occurred on March 29, 1995, in these cases: (1) were non-evidentiary, (2) did not include the taking of testimony, (3) did not include arguments, and (4) did not include any consideration of appellant's motion to suppress evidence. The judge's findings are supported by both the clerk's record and the reporter's record, and there was no testimony to the contrary. The docket sheet notations were that the defense had reviewed the State's file, that motions for probation and election were filed, that the trial rules were given to counsel, and the granting of the nine motions referenced in the judge's findings. The next notation is the reset of the case to April 11, 1995, for a pretrial motion hearing. The docket sheet does not reflect that there was any testimony or argument on March 29, 1995. The reporter's record reflects that the motion to suppress was considered by the trial judge and denied on April 11, 1995.

Appellants do not raise in their appeals to this Court anything that makes the lost reporter's record of the March 29, 1995, proceedings significant or necessary to the appeals' resolution.

We overrule point of error two.

Absence of Findings of Fact and Conclusions of Law

In point of error one, appellants assert they are entitled to a new trial because the record does not include the trial judge's findings of fact and conclusions of law concerning the voluntariness of their statements. Appellants rely on article 38.22, section 6 of the Code of Criminal

Procedure which provides that a trial court must enter an order stating its conclusion as to whether or not a statement was voluntarily made, along with the specific finding of facts upon which the conclusion was based. *See* Tex. Code Crim. P. Ann. art, 38.22, § 6 (Vernon 1979).

The provisions of article 38.22, section 6 are mandatory, but they apply only to custodial interrogations. *Land v. State*, 943 S.W.2d 144,149 (Tex. App.—Houston [1st Dist.] 1997, no pet.); *Garza v. State*, 915 S.W.2d 204, 211 (Tex. App.—Corpus Christi 1996, pet. ref'd); *White v. State*, 874 S.W.2d 229, 236 (Tex. App.—Houston [14th Dist.] 1994), *pet. dism'd, improvidently granted*, 890 S.W.2d 69 (Tex. Crim. App. 1994). The Court of Criminal Appeals has recently written that article 38.22 applies only to persons in custody. *Nenno v. State*, No. 72,313, slip op. at 13 (Tex. Crim. App. June 24, 1998) (designated for publication). No findings of fact or conclusions of law are required where the oral statement did not stem from custodial interrogation. *Land*, 943 S.W.2d at 149; *Garza*, 915 S.W.2d at 211; *White*, 874 S.W.2d at 236. This is because voluntariness is only an issue if the confession was obtained when the speaker was in custody. *Garza*, 915 S.W.2d at 211; *White*, 874 S.W.2d (citing *Rhode Island v. Innis*, 446 U.S. 291, 100 S.Ct. 1682 (1980)).

Therefore, whether the mandatory provisions of article 38.22, section 6 apply to these appeals depends on whether appellants' statements stemmed from custodial interrogation. A person is in "custody" only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest. *Nenno* slip op. at 13-14; *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex. Crim. App. 1996) citing *Stansbury v. California*, 511 U.S. 318, 322, 114 S.Ct. 1526, 1528-30 (1994)).

In addition to appellants' motions to suppress, evidence concerning the circumstances surrounding the recording of appellants' statement was presented at trial.[3] An administrative inspection warrant for Maxicare Pharmacy (owned by appellants) was issued by a federal magistrate on September 16, 1994, upon the affidavit of Rodney Waller, a diversion investigator for the Drug Enforcement Administration. The inspection was conducted on September 20, 1994. Waller was accompanied by investigator Gary Johnson from the Harris County District Attorney's office. Johnson tape recorded his conversation with Erma Giles, who was calm and cooperative. Johnson testified that he did not threaten Giles or place her under arrest during the administrative inspection. The investigators did not close the pharmacy, and Giles was free to leave the pharmacy if she had wanted to do so. Johnson testified that it was "quite clear" on the tape that Erma Giles was not in custody.

On October 6, 1994, investigator Waller and Harris County District Attorney's office investigator Dan McAnulty went to Maxicare Pharmacy to discuss the invoices Erma Giles had produced on September 20, and to determine the source of the drugs being sold in the pharmacy. This conversation between the investigators and both appellants was also recorded. McAnulty testified that appellants were free to leave the pharmacy and were not under arrest.

The investigation continued with the execution of a search warrant at Maxicare Pharmacy on October 11, 1994, and the issuance of a grand jury subpoena for Erma Giles, or the custodian of records for Maxicare Pharmacy, on October

---

[3] We are not limited in our consideration of the issue simply to what the trial judge had before him at the pretrial stage. *See Garza*, 915 S.W.2d at 211 n.5; *Webb v. State*, 760 S.W.2d 263, 272 n.13 (Tex. Crim. App. 1988).

20, 1994. An arrest warrant was issued for Erma Giles on October 25, 1994, and she was arrested the following day.

Neither appellant testified at trial. The motions to suppress included an affidavit of Erma Giles in which she stated that she "did not feel free to leave" during the September 20 interview in her pharmacy.

However, the determination of custody depends on the objective circumstances of the interrogation, not the subjective views harbored by either the interrogating officers or the person being questioned. *Stansbury*, 511 U.S. at 323, 114 S.Ct. at 1529. In these cases, the circumstances, at attested by the investigators, were that appellants were asked questions by authorities at their place of business on two occasions. The place of business was not closed by the investigators. Appellants were not threatened, and were free to leave the business had they chosen to do so. The criminal investigation continued, and appellants were not arrested until days later. The trial court, as trier of fact, was the sole judge of the credibility of the witnesses, and was free to accept the testimony of the investigating officers that appellants were not in custody on September 20, 1994, or on October 6, 1994, when the tape-recorded statements were made. *See Gilbert v. State*, 840 S.W.2d 138, 141 (Tex. App.—Houston [1st Dist.] 1992, no pet.). Because article 38.22 applies only to persons in custody, and because there was evidence presented from which the trier of fact could have found that appellants were not in custody when their statements were recorded, no findings of fact or conclusions of law as to the voluntariness of the statements were required.

We overrule point of error two.

Seizure of Codefendant's Pager

In point of error three, appellants complain of the seizure of codefendant Leonard Simmons's pager.[4] The numbers stored in the pager originated from Maxicare Pharmacy seven minutes after investigators left that location on October 6, 1994.

Appellants are without standing to challenge the search and seizure of Simmons's pager. "The established principle is that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence. Co-conspirators and codefendants have been accorded no special standing." *United States v. Padilla*, 508 U.S. 77, 81-82, 113 S. Ct. 1936, 1939 (1993) (citing *Alderman v. United States*, 394 U.S. 165, 171-72, 89 S.Ct. 961, 965-66 (1969)). The question of whether appellants' rights were violated by the search and seizure depends on whether they had an actual expectation of privacy in Simmons's pager, and if they did, whether that expectation was one that society is prepared to recognize as reasonable.

---

[4] The pager was seized on October 6, 1994. The investigators drove to Leonard Simmons's place of business, Abbey Pharmaceutical, immediately after leaving Maxicare Pharmacy on that date. They had a conversation with Simmons in the conference room at Abbey Pharmaceutical. During the conversation, investigator McAnulty asked to see Simmons's pager. Simmons took the pager out of his pocket, and cocked his thumb just over the button that would turn it off and erase any numbers. When McAnulty reached for the pager, Simmons pushed McAnulty's arm away, but the investigator managed to seize it before any information was deleted.

See Rakas v. Illinois, 439 U.S. 128, 148-49, 99 S.Ct. 421, 433 (1978); *Chapa v. State*, 729 S.W.2d 723, 727 (Tex. Crim.App. 1987).

Appellants argue they had a legitimate expectation of privacy in their own telephone numbers stored in Simmons's pager, relying on *Richardson v. State*, 865 S.W.2d 944, 953 (Tex. Crim. App. 1993). *Richardson* involved the use of pen registers to record the numbers dialed from two telephones. Acknowledging the Supreme Court's opinion in *Smith v. Maryland*, 442 U.S. 735, 99 S.Ct. 2577 (1979) (holding that telephone users have no actual expectation of privacy in the numbers they dial), the Court of Criminal Appeals held that "the use of a pen register may well constitute a 'search' under Article I, § 9 of the Texas Constitution" because "society recognizes as objectively reasonable the expectation of the telephone customer that the numbers he dials as a necessary incident of his use of the telephone will not be published to the rest of the world." *Richardson*, 865 S.W.2d at 953.

However, appellants' situation is unlike the one presented in *Richardson*. The appellants' telephone numbers were not retrieved from their telephone or their telephone line. The numbers were retrieved from a third party's pager in which they had been left. This is therefore more analogous to the interception of the letter written by the accused in *Garcia v. State*, 960 S.W.2d 329, 331-32 (Tex. App.—Corpus Christi 1997, no pet.). The court held, "When the postal service delivered appellant's letter to the addressee, it delivered over appellant's claim to any reasonable expectation of privacy in that letter as well. Having passed beyond his control and into the control of one not his agent, appellant lost standing to complain of any Fourth Amendment violation." *Id.* at 332. Likewise, when appellants entered their telephone numbers into Simmons's

pager, the numbers passed beyond their control, and they lost standing to complain of the seizure of the pager.

We overrule point of error three.

We affirm the judgments of the trial court.

Sam Nuchia
Justice

Panel consists of Justices Cohen, Wilson, and Nuchia.

Do not publish. TEX. R. APP. P. 47.

APPENDIX B

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308 CAPITAL STATION
AUSTIN, TEXAS 78711

May 12, 1999
COA# 01-95-01147-CR
Re: Case No. 0113-99
STYLE: GILES, ERMA FRANKLIN

Austin
May 12'99

STAMP

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

JANET SEYMOUR MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION,
AUSTIN, TEXAS 78711

May 12, 1999 **Austin** **STAMP**
COA#: 01-95-01148-99 **May 12'99**
RE: Case No. 0114-99
STYLE: GILES, ERMA FRANKLIN

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

ROBERT A MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

May 12, 1999
COA# 01-95-01149-CR
RE: Case No. 0115-99
STYLE: GILES, ERMA FRANKLIN

AUSTIN
MAY 12'99

STAMP

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

ROBERT A MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308. CAPITAL STATION
AUSTIN, TEXAS 78711

May 12, 1999 **Austin** **STAMP**
COA#: 01-95-01151-CR **MAY 12'99**
RE: Case No. 0117-99
STYLE: GILES, ERMA FRANKLIN

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

ROBERT A MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAY 12, 1999
COA#: 01-95-01150-CR
RE: Case No. 0116-99
STYLE: GILES, ERMA FRANKLIN

AUSTIN
MAY 12'99

STAMP

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

ROBERT A MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

May 12, 1999 **AUSTIN** **STAMP**
COA#: 01-95-01153-CR **MAY 12'99**
RE: Case No. 0119-99
STYLE: GILES, ERMA
FRANKLIN

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

ROBERT A MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

May 12, 1999
COA#: 01-95-01152-CR
RE: Case No. 0118-99
STYLE: GILES, ERMA FRANKLIN

AUSTIN
MAY12'99

STAMP

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

ROBERT A MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

May 12, 1999 **AUSTIN** **STAMP**
COA#: 01-95-01155-CR **MAY 12'99**
RE: Case No. 0121-99
STYLE: GILES, ERMA
FRANKLIN

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

ROBERT A MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

May 12, 1999
COA#: 01-95-01154-CR
RE: Case No. 0120-99
STYLE: GILES, ERMA FRANKLIN

AUSTIN
MAY 12'99

STAMP

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

ROBERT A MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

May 12, 1999 **AUSTIN** **STAMP**
COA#: 01-95-01145-CR **MAY 12'99**
RE: Case No. 0111-99
STYLE: GILES, GILBERT

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

JANET SEYMOUR MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

May 12, 1999
COA#: 01-95-01146-CR
RE: Case No. 0112-99
STYLE: GILES, GILBERT

AUSTIN
MAY 12'99

STAMP

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

JANET SEYMOUR MORROW
6630 CYPRESSWOOD DRIVE
SUITE 200
SPRING TX 77379

27 Bar Code